S.B.CIVIL SECOND APPEAL NO.487/2005

Bhanwar Singh Ajmera & Co.
vs.
Deptt. Of Irrigation and others.

DATE OF JUDGMENT ::: 3.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. NK Rastogi, for the appellant.

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Heard learned counsel for the appellant and perused the judgments given by the courts below.

The appellant/plaintiff is aggrieved against the judgment and decree of the trial court dated 11.5.2005 dismissing the suit of the plaintiff for injunction against recovery of more than Rs.5 lakhs against which the appellant preferred an appeal which was dismissed by the first appellate court vide its judgment and decree dated 1.9.2005.

It appears from the reasons given in the judgments that the evidence of the plaintiff was closed after giving more than sufficient opportunities and the suit was dismissed as no evidence was produced by the plaintiff.

Learned counsel for the appellant submits that no

recovery could have been effected against the appellant after a period of three years from the date of alleged excess payment to the plaintiff and this was a legal issue and it should have been considered by the trial court as well as the appellate court. It is submitted that the legal issue can be raised at any time and even at second appellate stage.

It is true that in the given circumstances, the legal issue can be entertained at second appellate stage but in this case, the plaintiff did not raise this issue during the arguments before the trial court or even before the first appellate court despite the fact that in appeal, the said ground was taken.

In view of the above, I do not find any reason to permit the appellant to raise any argument which prima-facie is not a pure question of law but is based on factual aspect of actual payment made to the plaintiff by the defendant and right to recovery also.

In view of the above, I do not find any substantial question of law involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya